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Attorneys for Plaintiff
SECOND IMAGE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECOND IMAGE, INC., a California
corporation,

Plaintiff,

vs.

RON SIN PHOTOCOPY, INC., a California
Corporation; **CHRISTINA SANCHEZ**, an
individual; and **DOES 1-10**,

Defendants.

Case No. C-07-05242-PJH

**PLAINTIFF SECOND IMAGE, INC.'S
NOTICE OF MOTION & MOTION
FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF
DEEPA KRISHNAN IN SUPPORT
THEREOF**

Date: July 30, 2008
Time: 9:00 a.m.
Ct rm: 3, 17TH Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 30, 2008, or as soon thereafter as this matter may be heard in Courtroom 3, 17th Floor, located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiff Second Image, Inc. ("Second Image"), will and hereby does move this Court for leave to file its Second Amended Complaint ("SAC").

This motion is made pursuant to Federal Rule of Civil Procedure 15(a), which states that the Court should grant leave to amend a complaint freely when justice so requires. Here, Second Image seeks to amend the operative complaint immediately after learning the new facts that form the basis of the SAC. Moreover, the proposed amendment would not prejudice any of the other parties.

This motion is based on this notice of motion and motion, the memorandum of points and authorities in support of this motion, the declaration of Deepa Krishnan in support of this motion, and any additional evidence and argument that the Court may receive at or before the hearing on this motion.

Respectfully Submitted,

DATED: May 30, 2008

KRONENBERGER BURGOYNE, LLP

By: _____/s/
Deepa Krishnan
Attorneys for Plaintiff
Second Image, Inc.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 As set forth in the First Amended Complaint, Plaintiff Second Image, Inc. ("Second
5 Image") has alleged that defendants conspired to gain unlawful access to Second
6 Image's secure online system, so as to pilfer trade secrets, and in order to unfairly
7 compete with Plaintiff. During a recent deposition, counsel for Second Image learned
8 that additional parties were likely complicit in this misconduct. Specifically, Second
9 Image learned that Thomas Dwayne Alkema ("Alkema"), a principal of Ronsin, and
10 Sanchez's employer, the law firm of Haushalter, Kurkhill & Gaspar, LLP, formerly known
11 as Neal, Haushalter, Ray & Kurkhill, LLP (the "Firm"), most likely worked with the named
12 defendants to perpetrate the previously-alleged misconduct. Accordingly, Second
13 Image seeks leave to file its SAC, which adds Alkema and the Firm as defendants.

14 **II.**

15 **MEET & CONFER EFFORTS**

16 Prior to filing this motion, Second Image sought to obtain leave by stipulation from
17 the opposing parties, pursuant to Federal Rule of Civil Procedure 15(a). However,
18 Second Image did not hear back from counsel for Ronsin Photocopy, Inc. ("Ronsin") on
19 this matter. Counsel for Sanchez did respond to Second Image's initial e-mail, but did
20 not state whether or not Sanchez would stipulate to the proposed amendment.
21 Accordingly, in order to timely meet the Court's deadline, Second Image brings this
22 motion.

23 **III.**

24 **ARGUMENT**

25 After a responsive pleading is filed, a plaintiff may amend its complaint "with the
26 opposing parties' written consent or the court's leave." FED. R. CIV. P. 15(a). "The court
27 should freely give leave when justice so requires." *Id.* In fact, federal policy strongly
28 favors determination of cases on their merits. Therefore, leave to amend the pleadings is

1 freely given unless the opposing party makes a showing of undue prejudice, or bad faith
2 or dilatory motive on the part of the moving party, undue delay, repeated failure to cure
3 deficiencies by amendments previously allowed, or futility of amendment. *Foman v.*
4 *Davis*, 371 U.S. 178, 182 (1962); *see Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
5 604, 607 (9th Cir. 1992).

6 Here, none of the factors that might weigh against granting leave exist. Second
7 Image seeks to add Alkema and the Firm as defendants to the lawsuit (the “New
8 Parties”). After the deposition of one of the two named Defendants, Second Image
9 learned that the New Parties were likely involved in the alleged misconduct. (Declaration
10 of Deepa Krishnan, ¶ 2.) Upon learning these new facts, Second Image immediately
11 sought leave to file its SAC. (*Id.*, ¶ 3.) Moreover, the addition of the two new parties will
12 not change the substance of the operative complaint. (*Id.*, Exh. C.) Second Image does
13 not seek to add any new causes of action. (*Id.*) Nor does Second Image seek to change
14 any of the allegations as to the existing parties. (*Id.*)

15 Granting Second Image leave to file the SAC would not prejudice either of the
16 existing defendants, Ronsin or Sanchez, nor either of the New Parties. Second Image
17 brings this motion early in the litigation process, with over six months of fact discovery
18 remaining. Trial is not scheduled for over a year. Sufficient time remains for all of the
19 parties—old and new—to conduct thorough discovery. Moreover, this motion is timely
20 under the Court’s Case Management Order, which sets May 30, 2008 as the last day for
21 filing a motion for leave to amend a pleading. Because Second Image has acted quickly
22 in seeking the Court’s leave, and because neither Ronsin, Sanchez, nor the New Parties
23 will be prejudiced by the filing of the SAC, leave to amend is appropriate.

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IV.

CONCLUSION

For the foregoing reasons, Second Image's Motion for Leave to File Amended Complaint should be granted.

Respectfully Submitted,

DATED: May 30, 2008

KRONENBERGER BURGOYNE, LLP

By: _____/s/
Deepa Krishnan
Attorneys for Plaintiff
Second Image, Inc.

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DECLARATION OF DEEPA KRISHNAN

I, Deepa Krishnan, declare as follows:

1. I am an associate at the law firm of Kronenberger Burgoyne, LLP, counsel to Plaintiff Second Image, Inc. ("Second Image"). Except as otherwise noted, I have personal knowledge of the facts stated herein and could and would competently testify thereto.

2. On Thursday, May 22, 2008, I deposed defendant Christina Sanchez ("Sanchez"). During the deposition, I learned that Thomas Dwayne Alkema ("Alkema") of Ronsin, and Sanchez's employer, the law firm of Haushalter, Kurkhill & Gaspar, LLP (the "Firm"), were likely working with the named defendants to perpetrate the previously-alleged misconduct.

3. The next week, I sought leave from opposing counsel to file a Second Amended Complaint. A true and correct copy of an email I sent to counsel for Sanchez and counsel for Ronsin Photocopy, Inc. ("Ronsin"), requesting they stipulate to leave for Second Image to file its Second Amended Complaint ("SAC"), is attached hereto as Exhibit "A".

4. Prior to the time of this filing on May 30, 2008, I received no response from counsel for Ronsin. On May 30, 2008, counsel for Sanchez and I exchanged emails regarding the proposed stipulation (true and correct copies of which are attached hereto as Exhibit "B"), but as of the time of this filing, Sanchez's counsel has not confirmed that a stipulation is agreeable.

5. A true and correct copy of the SAC, which Second Image seeks leave to file, is attached hereto as Exhibit "C".

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on May 30, 2008, in San Francisco, CA.

/s/

Deepa Krishnan